by the maker of a promissory note to the payee, by which the maker got possession of the note and held it until the Statute of Limitations had run, is actionable. *Cockrill v. Hall,* 65 Cal. 326.

FRAUDS, STATUTE OF—DEBT OF ANOTHER—ORIGINAL OR COLLATERAL PROMISE.—MECHANICS' AND TRADERS' BANK V. STETHEIMER, 101 N. Y. SUPP. 513.—*Held,* that where a bank refused to loan money to a corporation, whereupon the directors orally agreed with the bank that each one would guarantee their proportionate share of the amount of the loan, and the loan was then made, the promise of the directors was within the statute of frauds (Laws 1897, p. 510, c. 417, Section 21), as a promise to answer for the debt of another. McLaughlin, J., *dissenting.*

Whether the promise is within the statute depends on how the credit was given. *Clark on Contracts,* p. 68. If the credit was given exclusively to the promisor his undertaking was original. *Chase v. Day,* 17 John. 114; *Hartley v. Varner,* 88 Ill. 561. And likewise when, although the effect of the promise was to pay the debt of another, the leading object was not to become guarantor or surety but to subserve some purpose of his own, *Davis v. Patrick,* 141 U. S. 479, or where the promise is to indemnify the promisee against any liability which he may incur. *Jones v. Bacon,* 145 N. Y. 446; *Aldrich v. Ames,* 9 Gray 76. But where the promise is to indemnify the promisee against any loss he may sustain by reason of the default or miscarriage of a person under liability to him the promise is within the statute. *Nugent v. Wolf,* 11 Penn. 471; *Mallory v. Gillett,* 21 N. Y. 412. And in all cases the inquiry is whether such promise is independent of the original debt or contingent upon it. *Brown v. Waber,* 38 N. Y. 187.

HOMICIDE—TRIAL—INSTRUCTIONS—INVADING PROVINCE OF JURY.—LOGAN V. STATE, 43 So. REP. 10 (ALA.).—*Held,* that court is not invading the province of jury when he charges them that if they believe the defendant cursed deceased, and told him he was going to kill him and said this as soon as he saw deceased, and further, that defendant immediately after using such language, shot deceased, then defendant could not be acquitted on the plea of self-defense. Dowdell, Anderson and Denson, JJ., *dissenting.*

The jury are the sole determiners of controverted questions of facts, and instructions that the defendant was the aggressor is ground for reversible error as it invades province of the jury. *Watson v. State,* 82 Ala. 10. Charges which are abstract or invade the province of the jury, are improper. *Springfield v. State,* 96 Ala. 81. An instruction that, "if you believe from the evidence that the defendant brought on the difficulty for the purpose of stabbing deceased then there is no ground for self-defense and you cannot acquit him on that ground," is erroneous, in absence of any evidence to that effect. *State v. Smith,* 125 Mo. 2. But, although judges are not allowed to charge juries with respect to matters of fact, it does not prohibit them from determining and charging the jury as to whether there is any evidence in regard to the issue or tending to sustain a fact on which a conviction or judgment may depend. *People v. Welch,* 49 Cal. 174.

INSURANCE—PROOF OF LOSS—WAIVER DENIAL OF LIABILITY.—THOMPSON V. GERMANIA FIRE INS. CO., 88 PAC. REP. (WASH.) 941.—*Held,* that where there is an oral insurance contract, and the company, within the time written contracts provide for proving loss, denies liability on the ground that there is no contract, it waives proof of loss.

Waiver of proof of loss may be either, express, *Edgerley v. Farmers' Ins. Co.,* 48 Iowa 644, or inferred from any act of the insurer evincing a recognition of liability or a denial of obligation, exclusively for other reasons, *Lebanon Mut. Fire Ins. Co. v. Erb,* 112 Pa. 149; *Commercial Fire Ins. Co. v. Allen,* 80 Ala. 571. Want of proof of loss, *Graves v. Wash. Marine Ins. Co.,* 94 Mass. 391; *Caledonian Ins. Co. of Scotland v. Traub,* 80 Md. 214; or a defect in same, *State Ins. Co. v. Waackens,* 38 N. J. Law 564; *Metropolitan Acc. Assn. v. Froiland,* 161 Ill. 30, is waived by denial of liability on the grounds that there is no contract at all, *Rathbone v. City Fire Ins. Co.,* 31 Conn. 193. Such denial, however, must be made by an agent capable of waiving such proof, *Aetna Ins. Co. v. Shryer,* 85 Md. 362; *East Texas Fire Ins. Co. v. Coffee,* 61 Tex. 287; and be made to beneficiary and not to a third person, *Employers' Liability Assn. Corp. v. Rochelle,* 35 S. W. 869. This rule is in harmony with the elementary principle that a party who places his refusal upon one ground, cannot after action brought, charge to another and different one, *Aetna Ins. Co. v. Shryer, supra.*

JUDGMENT—PERSONS CONCLUDED—RUMFORD CHEMICAL WORKS V. HYGIENIC CHEMICAL CO., 148 FED. REP. 862.—*Held:* That one is not bound as a privy merely because he contributes to the defence, without having the right to control the proceedings or to appeal from the judgment or decree.

Parties to be bound by a judgment are all persons having a right to control the proceeding, to make a defence, to adduce and cross-examine witnesses and to appeal from the decision of an appeal lies, 1 *Greenleaf Ev.,* Section 535; *Peterson v. Lothrop,* 34 Pa. 223; all these privileges are essential and only those who had enjoyed them collectively are concluded by a judgment, *Cecil v. Cecil,* 19 Md. 72. General rule is that mere contribution to the defence will not make a judgment binding on a party outside of record. *Goodnow v. Stryker,* 62 Iowa, 221; *Lebanon v. Mead,* 64 N. H. 8; *Gaytes v. Franklin Nat. Bank,* 85 Ill. 256; not even if one contributes to the employment of counsel for parties to the suit, *Lownsdale v. City of Portland,* Fed. Cases, No. 8578, (1 Or. 381). The exceptions are well defined and supported by numerous cases. Whenever a tenant, agent or servant, or other party to a relation, contractual or representative, is defended by his landlord, principal or master, respectively, the judgment is binding on the latter. *Castle v. Noyes,* 14 N. Y. 329; *Thomsen v. McCormick,* 136 Ill. 135.

LANDLORD AND TENANT—LEASE—CROPS—LIEN.—THOSTESEN V. DOXSEE ET AL., 110 N. W. 567 (NEB.).—*Held,* that a clause in a lease attempting to create a lien on the crops to be raised on the leased premises for the payment of rent reserved is ineffectual to create either a legal or equitable lien on the crops grown thereafter on the leased premises.

It has been held that a stipulation that future acquired property shall be held for security for some present engagement is an executory agreement of such a character that a creditor may under it take the property into his possession when it comes into existence and the lien will be good. *Butt v. Ellett,* 19 Wall. 544. But in most jurisdictions the agreement itself, although it may be a license to take possession subsequently, *Holoyd v. Marshall,* 10 H. L. Cas. 215, being an attempt to contract for something not having even a potential existence, *Moody v. Wright,* 13 Met. 17; *Williman v. Neher,* 20 Barb. S. C. 37, creates neither a lien nor a right of property, *Long v. Hines,* Ho. Kan. 220; *Williams v. Briggs,* 11 R. I. 476, until by "a new intervening